

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

DIOMED, INC.,

Plaintiff,

v.

NEW STAR LASERS, INC.  
d/b/a COOLTOUCH INC.

Defendant.

Civil Action No. 04-12157 RGS

**LOCAL RULE 16.1 JOINT STATEMENT**

Pursuant to Local Rule 16.1(B), counsel for the parties have conferred regarding an agenda of matters to be discussed at the Rule 16 conference, a proposed pretrial schedule for the case that includes a plan for discovery, and consideration of mediation and consent to trial by a magistrate judge.

Counsel have prepared this Joint Statement pursuant to Local Rule 16.1.

**I. DISCOVERY**

The parties shall make their initial disclosures by February 4, 2005.

Plaintiff shall identify the asserted patent claims by February 4, 2005.

All discovery (including document production, responses to interrogatories, responses to requests for admission, depositions and expert reports) shall be completed by August 1, 2005 or within ninety (90) days after the Court renders a claim construction decision in this case, whichever is later.

The parties shall each be permitted fifty (50) interrogatories. Document requests and requests for admission shall not be limited, either in the total number of requests or the number of sets of requests. Each party shall be permitted a total of fifteen (15) depositions, including expert depositions, unless otherwise agreed upon by the parties and/or authorized by the Court.

Each party shall designate its expert witnesses, and provide expert reports with regard to issues on which it bears the burden of proof, within thirty (30) days after the Court renders a claim construction decision in this case.

Each party shall provide rebuttal expert reports within thirty (30) days of service of opening expert reports.

No discovery (such as contention interrogatories or questions at depositions) directed to the question of what claim construction either party advocates, and no briefing or hearings on the issue of claim construction, will be conducted in this case until after the Court renders a decision on claim construction in either Diomed v. AngioDynamics, Civil Action No. 04-CV-10019-RGS or Diomed v. Vascular Solutions, Civil Action No. 04-CV-10444-RGS, whichever shall first occur. After such decision, the parties will confer and file a supplemental joint statement proposing dates for any discovery that may be needed on claim construction and for any Markman proceedings in this case.

## **II. SUMMARY JUDGMENT**

Summary judgment motions shall be filed within sixty (60) days after the close of discovery.

Oppositions to summary judgment motions shall be filed within twenty-one (21) days after service of summary judgment motions.

Reply briefs in support of summary judgment motions shall be permitted and shall be filed within fourteen (14) days after service of the aforementioned opposition briefs.

### **III. CONFIDENTIAL INFORMATION**

Counsel will agree upon a Protective Order pursuant to Fed. R. Civ. P. 26(c)(7), which they will submit to the Court for approval prior to the exchange of any confidential documents.

### **IV. TRIAL BY MAGISTRATE JUDGE**

The parties are not prepared to consent to trial by a magistrate judge at this time.

### **V. SCHEDULE MODIFICATIONS**

All dates and other terms set forth herein may be modified by the Court in its discretion, or by written agreement between the parties as approved by the Court, or upon motion to the Court for good cause shown.

Respectfully submitted,

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Dated: January 21, 2005